

Florence, New Jersey 08518-2323
July 7, 2016

The Regular meeting of the Florence Township Board of Adjustment was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairman Zekas called the meeting to order at 7:30 p.m. followed by a salute to the flag.

Secretary Lutz then read the following statement: "I would like to announce that this meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided to the official newspapers and posted in the main hall of the Municipal Complex."

Upon roll call the following members were found to be present:

William Bott	Brett Buddenbaum
Joseph Cartier	Larry Lutz
Anant Patel	Lou Sovak
B. Michael Zekas	Anthony Drangula
Margo Mattis	

Absent: None

Also Present:

Solicitor David Frank
Engineer Andrew Banff
Planner Barbara Fegley

APPLICATIONS

- A. Application ZB#2015-15 for Matthew Everett. Applicant is requesting a Use Variance to allow legalization and continuation of a non-conforming commercial use (roadside mechanic business), as well as the construction of an approximately 30' X 50' X 16' pole barn to house both personal vehicles and equipment associated with the mechanic business on property located at 2030 Bustleton Road, Florence Township. Block 170, Lot 3.04.

Chairman Zekas said the Board received a letter from the applicant indicating that a variance is no longer needed. Solicitor Frank said the Board may recall that the applicant was before the Board some time ago and at his request the hearing was adjourned. The applicant has acquired a new property. He suggested dismissing the application without prejudice.

It was the Motion of Lutz, seconded by Buddenbaum to dismiss Application ZB#2015-15 without prejudice.

Upon roll call the Board voted as follows:

YEAS: Bott, Buddenbaum, Cartier, Lutz, Patel, Sovak, Zekas
 NOES: None
 ABSENT: None

- B. Application ZB#2016-06 for Francisca Santiago. Applicant is requesting a Use Variance to legalize an existing apartment on the second floor of the residence which will include separate cooking, bathroom and sleeping rooms located at 320 W. Fifth Street, Florence. Block 40, Lot 5.

Chairman Zekas called for the applicant. Ms. Santiago was sworn in by Solicitor Frank. Chairman Zekas asked her to provide an overview of the proposed use and why the variance was required. She purchased the property located at 320 West Fifth Street. As a single mom she thought Florence was a beautiful place to raise a family. She was told it was an illegal duplex and she would need to get the variance.

Chairman Zekas said basically the testimony was that her intent was to convert or utilize the single family dwelling as a multi-family dwelling and she is aware that the use is not permitted in that zone. Consequently, a use variance was required. Ms. Santiago concurred. Mr. Zekas asked if she intended to live on the property. She said it was her intention to live there. Chairman Zekas confirmed with her it was divided as an upstairs unit and a downstairs unit.

Ms. Santiago had photos to enter as exhibits. Solicitor Frank explained the procedure for entering the photos as evidence separately and describing what each one depicted. She said A-1 showed the concrete pad that is in the back of the property. A-2 showed the driveway. She knew parking would be discussed so she wanted to show that there was ample space. A-3 showed the living room of the upstairs unit. A-4 is a photo of the upstairs unit hallway. A-5 was a picture of the upstairs bathroom. A-6 showed an upstairs bedroom. Exhibit A-7 showed the second upstairs bedroom. A-8 showed the kitchen of the upstairs unit.

Member Buddenbaum asked when the improvements were made to the upstairs unit. Ms. Santiago said she bought the property "as is". Mr. Buddenbaum said the work looks fairly new and well taken care of. Ms. Santiago said the property was taken over by the bank and the bank did the improvements. Member Sovak asked how long ago she purchased the property. She said she purchased it about a month ago. Solicitor Frank asked if the bank secured any construction permits. Ms. Santiago said as far as she knew they did not apply for any permits. Member Bott asked the applicant if she was ever told that the apartment was illegal. Ms. Santiago said she was told that the second floor was illegal and she would have to come to the board to make it legal. Member Sovak asked if she knew it was illegal when she was purchasing the property. Ms. Santiago said she did.

Planner Fegley asked if Exhibit A-9 and A-10 showed the entrance to the second floor unit. Ms. Santiago said they did. She wanted to show that there was a separate entrance to the second floor. Planner Fegley asked if the separate entrance was at the back. Ms. Santiago said it was.

Member Cartier asked if there any internal stairs. Ms. Santiago said there was not. She said the next photo, A-11, was to show that she shared some property with her neighbor to the right. It is an open area. Member Buddenbaum asked if people going to the upstairs would need to go on the neighbor's property. She said no, they would still be on her property. She wanted to show that the upstairs apartment would have the most effect on that neighbor. Member Bott asked how someone would get from the upstairs apartment out. She said Exhibits A-12 and A-13 showed the entrance on the back of the property. She said Exhibit A-14 and A-15 show that her property and the neighbor to the right have an open area and there is no fence.

Member Buddenbaum asked if the outdoor stairs were the only way to get to the second floor. Member Patel asked if the deck was in the back. Ms. Santiago said the deck was the only way to get to the apartment and the steps and deck are in the back. She said there are two doors on the second floor to access the upstairs unit.

Ms. Santiago said once the bank took over the property they fixed everything up to sell the property. She was told it was vacant for numerous years and during that time there were a lot of complaints because it wasn't being cared for. The entire second floor was already there when she bought it. Chairperson Zekas asked if it was her intent to live there. Ms. Santiago said she planned to live in the first floor unit. Chairman Zekas asked if her plan for the second floor was to rent it out. She said it was. She purchased the property because her parents are getting older and eventually she would like to have them live in one of the units. Member Buddenbaum asked where they were now. Ms. Santiago said they live in Trenton.

Member Drangula asked about the two doors on the second story deck. Ms. Santiago said one went to the living room of the upstairs unit and the other is around the corner and down the hallway to another entrance. Chairman Zekas said one of her considerations would be to have her parents move in. He asked when that might be. Ms. Santiago they have a few more years to work. Member Bott asked who she planned on renting to until then. Ms. Santiago said she would like someone from the area and is reliable. She is a single mother with a ten-year-old and she wouldn't want someone there that she didn't feel safe with. Chairman Zekas asked if she was aware of any other multiple unit dwellings in the area. She presented Exhibits A-16 through A-18. She said there is a multiple unit dwelling at the dentist's office on Broad Street. The house right next to the dentist's office also appears to have a set up similar to what she has. On the corner of West Fifth and Broad Streets there is a house that has "A" and "B" on the mailboxes.

Ms. Santiago presented a letter from the next door neighbor who would be the most affected because they share the open area. Solicitor Frank said the letter could be kept with the application as Exhibit A-19 but it isn't something that could be entered as evidence because it is considered hearsay. If the neighbor wanted to testify he would need to be here to testify before the Board, he can't send in a letter.

Chairman Zekas said in the application it was noted that this was an existing two family illegally constructed dwelling. He asked if she was aware of a history of more than one family living there. He asked if she knew how long that may have been. She said she did not because nothing was ever documented. Chairman Zekas asked if she knew how many people may have been living there at any time. Ms. Santiago said she didn't know. She had heard at one time there was a mother and her child on the second floor. She didn't know who was living on the first floor.

Chairman Zekas said he didn't know if at this time the Board should hear from the professionals regarding their reports or if the positive and negative criteria for the application should be reviewed. He said the applicant should have received the letters from the professionals, and for a use variance it is incumbent upon the applicant to address the positive and negative criteria associated with the proposed use.

Solicitor Frank said when towns undertake to do zoning they have to do it according to state laws. Those rules require a Master Plan created by the Planning Board. The plan looks at the community's resources, physical and otherwise, and looks at how it would like the community to develop. The plan then goes to the governing body of the town and they create ordinances that try to carry out what was expressed in the Master Plan. The plan would say in some districts, like a Neighborhood/Commercial area, that it would allow some mixture of commercial and multiple family and apartments above businesses and that kind of thing. There would also be residential zones with different densities, meaning different numbers of houses per square piece of land. The Master Plan is made real through ordinances that the governing body adopts. The state laws also say there has to be a place for people to come and say the general laws as applied to their particular property are either unfair because of some particular condition of the property, or it makes more sense from the perspective of the Master Plan to do something different. People who come before the Zoning Board need to show them why these things are so. The fact that there exists an illegally constructed apartment isn't one of those. There has to be something about the property or its physical location that would convince the board to essentially allow an applicant to break the law. What the chairman is asking the applicant to do is to tell the board what those things are. Ms. Santiago would need to tell the board the special reasons that would make this site peculiarly or particularly suited to be a two family instead of a one family, as the zone requires, and as it seems most of the dwellings around the property are.

Solicitor Frank said the planner's letter to the applicant asked that she to speak to the positive criteria and she asked the applicant to speak to the negative criteria. The negative criteria are what injuries would it do to the neighborhood and the public good to do what is being asked for. What injury or impairment would there be to the zone plan or Master Plan? He said she would need to explain these. It is different than asking for a side yard setback because a lot is too narrow. That is something that is commonly seen.

Ms. Santiago said she didn't know the density, but there were quite a few positive points, including the carport and the concrete pad and what she would like to do in the future. She said she didn't have any negative to mention except for the neighbor to the right of

her would be affected. In regards to density and why she should be allowed, it is already there. It's been constructed and she did nothing to it. Member Buddenbaum asked if she knew if it had been a single family home at some point. Ms. Santiago said at one point it had been. Member Patel asked if there was a staircase inside that was blocked off. Ms. Santiago said there is no staircase.

Mr. Bott asked if any neighbors have given her any input about what they don't like. Ms. Santiago said she hasn't had anyone to explain to her why they don't like the idea.

Planner Fegley asked how many gas and electric meters there were. Ms. Santiago said there is one water meter and two gas and electric meters. She said there are two hot water heaters.

Solicitor Frank said this was puzzling. The only way to get an electrical meter is to get a permit. The only way to get a permit is to come to the Municipal Building and apply for one. There is more to this story. Solicitor Frank asked if they were visible in any of the photos. Chairman Zekas said they are on the western side of the house. Member Cartier said there was a picture that showed the two electrical meters. Solicitor Frank said this was causing him to question a lot. If there were permits issued, and there is a division of utilities, at some point someone had to understand there were two dwelling units in this building. We may not need to be here for a Use Variance application. It may not be the case that this was illegally constructed at all. He said the applicant should do some more homework. There are two places to go to do that homework. The first place is the Construction Office. They have to have a file with the permits issued for this property. Ms. Santiago indicated she had been there and they didn't have any information. The second place to go is the office of the Tax Assessor. The Tax Assessor has something called a Property Record Card that would have to be updated when there is a reassessment in the community. There should be information that would show if the township acknowledged the two units. When the Construction Code Official issues a permit, eventually there is a Certificate of Occupancy issued. A copy of that CO should be sent to the Tax Assessor's Office to trigger the Tax Assessor to increase the assessment to reflect the new improvement. There may be a duplication of something in that office that they aren't finding in the Construction Office for reasons he doesn't understand.

Member Bott asked the applicant if she received a tax bill from the township for the property. Ms. Santiago said she did not. Solicitor Frank suggested adjourning the hearing while the applicant does some more homework to determine if the hearing is needed. Member Patel checked the record and said the tax records show two units. Solicitor Frank asked that Member Patel to print the record and submit it to the Clerk of the Board because it is now part of the official record of the hearing.

Chairman Zekas said prior to adjourning and for the benefit of the applicant, he suggested opening the meeting to the public. It could provide information about the property that may help unravel some of this mystery. Also the board may get some feedback from

anyone who wants to speak to the application. In the event that the hearing is continued it could help the applicant address the positive and negative criteria.

It was the Motion of Lutz, seconded by Sovak to open the meeting to the public regarding Application ZB#2016-06. All ayes.

Richard Brown, 333 West Fifth Street, was sworn in by Solicitor Frank. He said he lives directly across from the property in question. He asked if the application would be continued at another meeting. Chairman Zekas said yes. Mr. Brown said he is opposed to the conversion of the dwelling to two units. He said he was going to read from a prepared statement. It was with great reluctance that he appeared before the Board because he didn't want to create friction between neighbors because it is bad for the neighborhood. He believes this application, if approved, would have a permanent negative impact on the neighborhood. He said it will impact financially in the form of lower property values. It is his hope that regardless of the outcome the relationship between all neighbors would be good, but he knows that sometimes these things can be bad for neighbor relations. This application, if approved, would have a permanent detrimental impact on the community. Variances for property coverage are one thing, such as his neighbor who got a variance for a garage. It was good for the neighborhood and had no negative impact on any of the homes around it. Potential buyers coming to the neighborhood see the positive impact that someone is willing to make a big investment in the neighborhood. It creates confidence, raises property values. On the application it was stated that this was a two family dwelling. It further stated the applicant intended to legalize the currently established two family dwelling. That is in dispute. In a moment another neighbor will be providing some history since he lived across the street for many years. It starts off with the supposition that it is an illegally constructed home. It is very possible that this was an in-law suite at one time. If that is the case the in-law suite is a legally permitted structure and can exist in Florence but cannot be used as an apartment. To use the term 'legalize', it is a single family home. To use it legally as it is it must be used as a single family home. It may have been used in an illegal manner in the past; he doesn't have proof of that. That does not make the structure itself illegal. If it were used in an illegal manner, the actions and activities of the homeowner would have been illegal but not the structure itself. The previous homeowner's illegal activity, if it existed, in no way gives validity to the notion that this home should be converted to apartments. He believes the home is legal as a single family home and not apartments.

Mr. Brown stated that earlier today he spoke to township officials regarding in-law suites and he was advised they are permitted and do exist in Florence Township. It was further explained to him that a variance could be provided to allow an in-law suite, which would expire at the time that the owner's family no longer required it. Solicitor Frank asked who he spoke with. Mr. Brown said he spoke to Township Administrator Richard Brook. Solicitor Frank explained that would be hearsay. Mr. Brown said if it was in dispute, someone here should know whether or not an in-law suite is a permitted type of structure in Florence. It makes his conversation with Mr. Brook not important because it either is or it isn't. He asked if anyone knew the answer. Solicitor Frank said he believed they

were not permitted. They may have been permitted at some time. Mr. Brown said it was explained to him that with a variance it could be done and expire. Solicitor Frank said he is not going to dispute what he may have heard, but this board at times has attempted to address situations where family members needed supportive living arrangements. For instance, it has addressed developmental disabled young people who need to live near but not directly within their family's household. The board crafted some creative ways to help permit that situation. He does not believe that in-law suites are permitted. It could vary by zone as well. That's not to say that they weren't at some time permitted, but speculating about all that is just that – speculation. The board needs to get some facts as opposed to speculation. If anyone has personal knowledge of how this came about, it would be really helpful to the board.

Solicitor Frank said Mr. Brown asserted there would be a negative impact on the neighborhood. He asked Mr. Brown to explain how he perceived there would be a negative impact. Mr. Brown said if someone is trying to sell a house and five people want to buy it, they would most likely get the asking price. If a house is being sold and only one person wants to buy it, the seller would most likely have to take what is being offered. Anything that potentially stops a person from wanting your house has a possible negative affect on the property value. Having an apartment across the street has a negative impact. It is a neighborhood of purely single family homes. The examples the applicant gave were three blocks away. The whole block that the property in question is on are all single family homes. Oak Mill behind that block is single family homes. His side of the block and the block behind are all single family homes. Solicitor Frank said the board doesn't deal with property values. He said Mr. Brown's perception of the negative impact is that it is different than the single family homes that are there now. Mr. Brown said not only is it different, it conflicts with the zoning on two counts. First it conflicts with the zoning in a neighborhood zoned for single family homes and it conflicts with the density of the neighborhood. The property is undersized even for a single family home. Allowing the apartment there would make that property six times the permitted density of the zone.

Ms. Santiago said she believed the property was priced low because of the issue with the property. It is not technically a single family and it wasn't a duplex and the bank was having trouble selling it. That's why it was vacant for that many years. No one wanted to take on the challenge.

Mr. Brown said there was another person who purchased the property believing that it was a duplex. When he found out it was a single family home, he backed out and never moved into the property and it went up for sale again. That was probably when the status of the property was discovered. This house was sold as a single family home. The buyer knew at the time it was purchased it was a single family home. There is no financial hardship there because they purchased what they believed it to be.

Solicitor Frank said financial hardship isn't the kind of hardship that the board is able to recognize as a zoning hardship. A zoning hardship would be something about the property that makes the general rule inappropriate and wrong.

Mr. Brown said in his opinion homebuyers do pay a premium to live in a neighborhood of single family homes. The premium is paid in the form of a higher purchase price, higher assessed value and higher property taxes. The homeowners in this neighborhood have paid that premium to live in that part of the community. He believes that the local ordinances that pertain to this zoning are there for protection of the homeowners within the community. He said looking at neighborhoods in Florence where there are apartments mixed in with single family residences, the properties are valued considerably less. He moved into a neighborhood of single family houses and would not personally have considered the property if there were apartments across the street. He grew up in Florence and has been in his current residence for 27 years and he would like to stay in his home. This would change what he purchased. He would no longer be in a neighborhood of single family homes. He feels it would be unfair to him, his family and it would conflict with zoning requirements. He is not asking the board to do anything, he is just asking them to keep things the way they are. The in-law suite issue is in dispute; he was going to speak about that. If the applicant's intention is to move her parents in and in-law suites are permitted, that would be a way to go. It would be a way where everyone gets their way.

If the intent was to own a multi-family home, there are plenty of multi-family homes in Florence. The applicant in this case purchased a single family home in a neighborhood comprised exclusively of single family homes and wants to change the neighborhood. He did review the application, and in Planner Fegley's letter the burden is put on the applicant to show why it is necessary to convert this residence into apartments. Additionally, in the letter it stated that the applicant must prove to the board that special reasons exist in order for the board to grant relief. The applicant must also demonstrate that the proposal would advance the purposes of the Municipal Land Use Law and the Township Master Plan. Additionally, the applicant must also show that the variance can be granted without substantial detriment to the public good and the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. He said he would make the argument that if indeed our property values are lowered by this, that does damage the public good.

Solicitor Frank asked if Mr. Brown was an expert real estate appraiser. Mr. Brown said he was not. Solicitor Frank said whatever he may feel about his property value and whatever reality that may have; unfortunately, his opinion on that is a layperson's opinion. The board can't accept the statements as being factual. Those are the rules of evidence. Mr. Brown said the board could accept his opinion as being his opinion. He believed that approving this application given the community opposition to it and the financial hardship that it would put upon him would be the wrong decision. Ms. Santiago would have to articulate to the board a reason so important and so compelling that the board would have to believe it would be in the best interest of the community to overrule the opinions and the will of the residents of the neighborhood.

Solicitor Frank said he would like to make a correction to the statement. It would be to overrule the general rule of the ordinance, which is theoretically the expression of all of

the residents of the community. The applicant does have to prove in terms of the burden being on her and having to prove there is something extraordinary about the property. The board should remember it is about whether or not she proves something about the ordinance and not the opinions of the neighborhood.

Mr. Brown said, in closing, he believes that this application should not be approved. The community is against it and it runs counter to the ordinance. He believes it will change his way of living. He would not have purchased his home if there were apartments across the street. He believes that he will be financially harmed because he feels it will lower his property value. He can say as a fact he would not be interested in buying his own property if there were apartments across the street. It will cause the housing density standards to be grossly exceeded. The zoning required is four housing units per acre. There are five properties on the acre the applicant's house is on.

Member Bott said Mr. Brown said during his remarks that he would move his family if the application was approved. Mr. Brown said living in a home and buying a home is about confidence. When someone pays a thirty-year mortgage they want to have confidence that in thirty years you still want to live there. He isn't saying he would move today but he would really have to consider it in the near future. Member Bott said he felt that was a little extreme.

Solicitor Frank said as a legal note, when you look at density you don't look at the block or the surrounding property. The density is of the single parcel. Mr. Brown demonstrated that there is already exceedance of the existing density on the lot. The property as a single family dwelling is not too far from the general density that surrounds it. Each parcel is looked at as an individual property.

Planner Fegley said her letter stated it was an undersized lot that exceeds the coverage. That doesn't mean that the lot next door doesn't have the same issues but they aren't asking for two units.

Dominick Cucinotta, 313 West Fifth Street, was sworn in by Solicitor Frank. He said he could provide some insight on the property. The property was owned by the Henry family. It was built by Mr. Henry and was only a little bungalow. Somewhere in the mid-fifties his daughter had gotten married and she needed a place to live. Mr. Henry then built the upper section. He doesn't know if there were permits because he doesn't know how things were done then. Mr. Henry built the upstairs as an apartment for his daughter and her family. Solicitor Frank asked if he knew what year that was. Mr. Cucinotta said he believed it was sometime in the mid-fifties. The son-in-law died and the daughter stayed there with her son. She remarried and they lived there until the late sixties and then she passed away. Her second husband and her two sons lived there for quite some time until the late seventies. Then he decided to move. Mr. Henry, the original builder, passed away also. Mrs. Henry lived downstairs and the son-in-law and the two boys lived upstairs. He left when the boys were done college. Mrs. Henry lived there until she had to go into a nursing home. When she went into the home, the son took over and remodeled the whole place from top to bottom. During the process he and his

wife divorced. She got the house. She was renting it out illegally. He doesn't think there is anything on record about the property being a duplex. He thinks they just did it with no permits. It was being rented out to Section 8 for up to ten years. No one knew anything. Member Patel asked when that was. Mr. Cucinotta said it was in the late seventies early eighties up until about five years ago and then it sat for five years, and then someone came and started working on the place. No permits were pulled and no one from the township knew what was going on. The bank was doing work on the property. Someone tried to buy it but it was being passed off as a duplex and it wasn't a duplex. This poor woman comes along and buys it from the bank "as is." The bank did all kinds of work and never pulled a permit. Now it will fall on her. The place was done completely illegal, as far as he knows. The township didn't do its job.

Mr. Cucinotta said he is against the application. He has nothing against Ms. Santiago. If she wants an in-law suite he has no problem with that, but he doesn't want to see a duplex there. Florence is starting to get shabby and the town is going downhill. He has been here all his life and is seeing it. She could possibly get nice neighbors in there if she rents it out. It is possible that 10 to 15 years down the road she might decide to sell the house. Then someone buys it and who knows who they would rent to.

Member Drangula asked Solicitor Frank if there were records available from the fifties. There was a fire a while ago that destroyed many of the records. Solicitor Frank said it may very well be that the best evidence anyone has is the testimony of Mr. Cucinotta. Mr. Cucinotta said he thought the first was in the mid-seventies. Solicitor Frank said there are probably duplicate tax records at the county.

Solicitor Frank said his concern is that there is some hint of a preexisting non-conforming structure or use. When is something an in-law suite and when is it a separate apartment? Would it be having a separate entrance or having a separate cooking facility? Generally, those are two hallmarks of a separate dwelling. When did this property get separate stairs and a separate entrance? Was it ever operated as a single house with the unit even if some people lived upstairs and some were downstairs? It needs to be explored.

Member Bott said he felt if there were separate utilities that would make it two units. If it can be determined when it was done that would be when it became two units. Mr. Cucinotta said it was done sometime in the mid-sixties. Member Bott said it needs to be determined exactly when it was. Solicitor Frank said more information was needed.

Mr. Cucinotta said it is possible there isn't any. He has seen many instances over the years where single family homes were turned into multiple family dwellings and no one said anything. That's the way it was done in those days. Solicitor Frank said it needs to be recognized that the complicated, difficult and comprehensive zoning regulations that are currently in place were not always here. Some of the very first zoning ordinances in many communities were only from the late 1950's. They were not necessarily very comprehensive. The way things are done today with some order is not necessarily the way things were done at that time. If there is one body of records that is most likely to be there and informative it would be the tax records. Construction records sometimes are

unavailable. The tax records would be a big help to appreciate what is going on. There may be other people in the neighborhood who also know what went on and could perhaps enhance the testimony that has been heard.

Solicitor Frank stated the board has the ability to determine if something is a preexisting non-conforming use or a preexisting non-conforming structure. There needs to be more information to arrive at that kind of conclusion. It is in fact the applicant's burden to develop the information.

Chairman Zekas said he believed a former owner of that home appeared before this board for a variance of installation of a roof on the front porch. Mr. Cucinotta said he thought it was Charlie Henry. The overhang is over a concrete pad and he replaced that. He renovated the entire property inside and out in the eighties. Solicitor Frank said there would have to be records that weren't destroyed in the fire in the 1970's if it was done in the 1980's. Chairman Zekas said he recalled having the owner before the board specifically for the front porch, he didn't remember if it included the carport. It would be interesting to look at that application to see how it was filled out. Was it designated as a single family or a multi-unit dwelling. Solicitor Frank suggested Ms. Santiago contact the Land Use Clerk and see what was on file in her office. Chairman Zekas estimated it was brought before the board about ten years ago.

Mr. Cucinotta said the units have separate meters and separate gas. He said Solicitor Frank asked what would constitute an in-law suite versus a separate unit. Solicitor Frank said he did ask that question. Mr. Cucinotta asked if there was any ruling from a court that would determine if this was a duplex or an in-law suite. Member Buddenbaum said he would imagine one would be a little more familiar and the other more disconnected. Solicitor Frank said that question can't necessarily be answered on the fly. The ordinance would need to be reviewed very carefully. Mr. Cucinotta said there were rules for Pennsylvania that were very clear regarding in-law suites. Solicitor Frank said the law focuses on a single housekeeping unit. It came from the courts after some houses in New Brunswick were inhabited by a number of students. The city said they were boarding houses and the students said no they weren't because they all cooked together and bought the food collectively and shared chores. They said they operated as a single housekeeping unit. As far as the question of what is a duplex and what is an in-law suite, the ordinance and other cases need to be reviewed and bring it back to the board. Ultimately the board will make the decision.

Member Cartier asked about the stove and said it looks like there is an electric stove. Ms. Santiago said it was her understanding there was gas. When the bank did work on the property, they converted the heat to electric. It was not done prior to the bank having it. And there are electric stoves. Member Buddenbaum said maybe there was gas being shared by both floors and then it was separated to sell as a duplex. Member Sovak asked if PSE&G would have record of when a second service was added. Mr. Cucinotta said there were two electric and gas services to the property. Downstairs there was a boiler with hot water heat. When the bank did renovations they tore out the copper and put in a cheap electrical that would not even pass code. Upstairs there was some type of separate

heating unit. Mr. Sovak asked if there were two meters. Solicitor Frank said he didn't know if PSE&G would have a record of when they institute services.

Ms. Santiago said she called PSE&G to change to her name and they did ask her about a second meter and if she wanted them both in her name. Solicitor Frank said the question that Mr. Sovak asked was if the utility would have a record of when they put in the second service there. That could possibly provide a date for when the dwelling was multi-unit. It could be interesting if it goes back into the 50's. Mr. Cucinotta said it wouldn't go back to the 50's because the second floor was not put on until the 60's. Solicitor Frank said Mr. Cucinotta's previous testimony was that it was done in the 50's. Mr. Cucinotta said he was speculating about the exact time but it was somewhere in that range.

Chairman Zekas said from what's been discussed thus far, there is a possibility that this may have been designated at some point as a two-unit dwelling. The tax record seems to prove that. This all may be moot.

Solicitor Frank said the board may not need to hear an application for a use variance but the board may need to hear an application to certify a preexisting non-conforming use. The burden is on the applicant to prove all of that. As it is right now he is pretty sure it is a single family dwelling until proven otherwise.

Mr. Brown asked if that meant since it is believed to be a single family dwelling absent proof that it was a duplex of some sort, it would be considered to be a single family home? And that the burden is to prove it is a duplex rather than to prove it is a single family dwelling? Solicitor Frank said that was correct.

Anthony Garruto, 314 West Fifth Street, was sworn in by Solicitor Frank. He said he lives next to the property. In 2005 he came to the Construction & Code Office to see when permits were pulled. The last permit on record was issued in 2005 for the carport. There were no permits for electrical, none for the upstairs, no permits for anything. His understanding is that if you buy a home you must conform to what that home is. This is a single family home, it should be brought up to code for a single family home and then it's done. It doesn't matter what happened in the 50's, it is a single family home.

Solicitor Frank said if it was historically a two family home, it is the applicant's burden to prove it. The way the zoning works is that zoning changes over time. This may have been zoned industrial at one time, then maybe single family and then maybe commercial. Mr. Garruto said when it was changed it would need to be brought up to code. Solicitor Frank said that was not the case. Solicitor Frank said suppose the planning board decided that his neighborhood was suddenly going to be zoned industrial. The homeowners would have a vested right to continue as they are. So if the property in question was always a two-family dwelling it has a vested right to continue as a two family dwelling. The board just hasn't determined yet what the property is. Mr. Garruto said it is already known what it is. Solicitor Frank said the current zoning is what is known. Mr. Garruto said the mortgage said it is a single family home and that is a legal document. It is a

single family home, period. Solicitor Frank said in essence if there was something that was legal when it was created and it has not been abandoned since then, there is a right to continue to do it. That is the fundamental law. Even if the zoning changes subsequent to that or zoning isn't instituted. There is another problem, called Estoppel. That is the idea that if the town looks the other way for a very long time, for example if the tax records going back four years indicate it's a two-family home, and the town collected taxes on a two-family home, it would be extremely difficult for the town to now turn around and say, it's a single family home because we said it is. Mr. Garruto said if someone buys a home it has to be brought up to code as a single family home, even if it is a duplex. Solicitor Frank said Mr. Garruto is speaking about inspection code and he is speaking about zoning code. They are two different things.

Mr. Garruto said it is a single family home and he feels bad for the applicant because she is paying a mortgage and can't live in the home. He said the bank did a number on her. Solicitor Frank said the board can't help her with that, all it can do is look at the zoning. Mr. Garruto said it sold as a single family home and that is how it should stay. He can't see any reason why it should not be. Solicitor Frank said he tried to help Mr. Garruto but he was not going to give an in depth zoning lesson during the public comments and it was not the place to go back and forth.

Member Sovak said he was hearing that if this condition went on in the township for years, that it can't be said now that since it is zoned something it has to be that. Solicitor Frank said he represented someone in South Jersey who owned a farm. There was a shooting range on the farm that was used by a gun club. It was started in the 50's before it was even zoned. There were two interesting facets to that. The first one was that it is an existing non-conforming use because it started before there was zoning. It was legal when it was created and has been used ever since. The town can't tell the farmer he can't have the shooting range on the farm because that right vested. There is another layer to the case, which is the Estoppel. In the 1980's the police department used to come to the range and shoot. They trained the swat team there for about 10 years. How could the town now turn around and say the farmer could not have a shooting range there? The town itself used it. The Estoppel is the idea that if something has been around long enough and if the town has somehow signaled its consent to its existence at a certain point it becomes improper and the town becomes Estopped. He said these are potential issues for the application presented this evening.

Member Bott said there are no stairs inside the property to access the second floor. The only stairs are on the outside. He sees that as an apartment. Solicitor Frank said it is a question of fact. When was the interior staircase eliminated and the exterior staircase created? He suggested the Property Record Card might help to show when that was.

Member Drangula asked if Estoppel would run with the property. Solicitor Frank said in general, rights under zoning law run with the land. They are not personal for the owner. There are circumstances in which that may not be the case.

Mr. Brown asked what would happen if the activities were blatantly illegal but not detected by the township. He gave the example of a meth lab. You can't say it was a meth lab 50 years ago so you can still run it. We are talking about an activity that could have very well been illegal run without the township's knowledge. Chairman Zekas said lacking evidence or some documents that indicate it speculation. Mr. Brown asked if he was to understand that the applicant is going to have to provide proof. He was told that was the case. Mr. Garruto asked what would happen if the applicant couldn't prove the property was ever turned into a duplex. Chairman Zekas said the application would be continued and if it was the applicant's desire to pursue a use variance, that is what would be done. Mr. Garruto questioned if that was what was happening right now. Chairman Zekas said he hasn't yet asked the applicant but his guess was that the application would not be concluded this evening.

Mr. Brown asked if there would be a notification sent regarding when the meeting would be. Solicitor Frank said he recommends the applicant ask for an adjournment of the public hearing of her use variance application for a month, until the board's next regular meeting, August 1st. He said that is only a few weeks away and that is pretty quick. He asked the applicant if she wanted to come back in three weeks or in September. Ms. Santiago said she would like to come back in September. Solicitor Frank said his recommendation was that if the applicant was willing, to request an adjournment of her use variance application to the board's September 1st meeting at 7:30pm here in this room. It would allow her the opportunity to fully explore what records might be available from the municipality, the county tax board, the public utilities and perhaps from other neighbors who may know something about the history of the property. She can then come back here and potentially determine if there is a need to hear a use variance application or whether there needs to be a hearing to certify a preexisting non-conforming condition. It is possible that the proofs might not tell much and the best evidence would be Mr. Cucinotta's testimony that he provided tonight. It is also possible that it will be proven that there was an in-law suite there.

Mr. Cucinotta said when the bank was first selling it they were selling it as a duplex. Then they changed and said it was not a duplex. He thought maybe they know something. They must have found out something to make them change their minds. Ms. Santiago said some of the documents say single family and some said duplex. She thought that was because they couldn't make the duplex legal so they called it a single family. Mr. Patel asked if she tried to get a Certificate of Occupancy, and did the town not issue it. Ms. Santiago said she did try. There was an inspection recently but the property didn't pass because of a couple of things. Member Patel asked if it failed because of it being a duplex. Ms. Santiago said both units were inspected as two separate units. Solicitor Frank said the Construction Code Official would inspect as building code, not zoning codes.

Mr. Cucinotta said it doesn't matter if there were no permits issued in the fifties. What does that have to do with the applicant determining whether she wants to put her parents in the property or put in a rental property. The board was here tonight to decide whether or not it was going to be a duplex. Chairman Zekas said some of what was discussed

noted there may be documentation that exists that may identify this as a preexisting non-conforming use.

Mr. Cucinotta asked why the bank wouldn't have that information. Solicitor Frank said the board was not going to speculate about that and will be providing an opportunity for the applicant to develop the information.

Chairman Zekas said earlier in the hearing the need for the positive and negative criteria. Hopefully during the discussions tonight, the applicant got a feel for what she needs to be prepared to present, in the event the use variance is required.

It was the Motion of Lutz, seconded Patel to close the public hearing for Application ZB#2016-06. All ayes.

Chairman Zekas asked the applicant what she would like to do. Ms. Santiago said she would like to adjourn to the September meeting and try and gather as much information as she can. Chairman Zekas said for the purpose of everyone there this evening, the applicant is requesting an adjournment to the September meeting. Since that is on the record, he wanted to let everyone in attendance know that the board is not going to require the applicant to re-notice. They would do so in the event that it was rescheduled.

It was the Motion of Lutz, seconded by Patel to grant the applicant's request to adjourn.

Upon roll call, the Board voted as followed:

YEAS: Bott, Buddenbaum, Cartier, Lutz, Patel Sovak, Zekas

NOES: None

ABSENT: None

MINUTES

It was the Motion of Lutz, second of Buddenbaum to approve as submitted the minutes of the Regular meetings of February 1, 2016, March 7, 2016, April 4, 2016 and May 2, 2016. All ayes.

RESOLUTIONS

- A. Resolution ZB-2016-11 granting the application of Heather Przbylko for a bulk variance for impervious lot coverage to permit installation of an in-ground swimming pool and associated concrete walkways and concrete patio on property located at 619 Seaman Drive, Florence.
Block 156.07, Lot 10.

It was the Motion of Lutz, seconded by Cartier to approve Resolution ZB-2016-11.

Upon roll call, the Board voted as follows:

YEAS: Buddenbaum, Cartier, Lutz, Patel, Sovak, Zekas

NOES: None

ABSENT: None

CORRESPONDENCE

- A. Compliance Review Letter for 150 Alden Property, ZB#2015-16 from Maser Consulting dated June 20, 2016.
- B. Compliance Review Letter for 150 Alden Property, ZB2015-16 from Environmental Resolutions, Inc. dated June 20, 2016.
- C. 2017 Meeting Schedule for review.

Planner Fegley said they complied with all of the conditions. Engineer Banff said his letter reflected the same.

It was the Motion of Lutz, seconded by Buddenbaum to receive and file Correspondence A and B. All ayes.

Chairman Zekas said Correspondence C is voted on at the Reorganization Meeting.

OTHER BUSINESS

Motion of Lutz, seconded by Patel to adjourn the meeting at 9:20 p.m. Motion unanimously approved by all members present.

Larry Lutz, Secretary

/ak